Supreme Court of the United States

October Term, 1947

No. 3

MURRAY WINTERS,

Appellant,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Appellee.

APPELLEE'S BRIEF ON REARGUMENT

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Preliminary Statement

This is the second reargument, directed by an order restoring the case to the docket and instructing the filing of new briefs on three specific questions [91 Law Ed. (adv.) 1605; 67 Sup. Ct. 1747, *infra*, p. 3], of an appeal from a final judgment of the Court of Special Sessions of the City of New York [R. 49; Judicial Code, §237(a) (28 U. S. C. A., §344); 45 Stat. 54 (28 U. S. C. A., §861a)]. That judgment was entered upon an order of the Court of Appeals affirming (R. 42-3, 44-8; LEHMAN, Ch. J., dissenting at R. 48-9; 294 N. Y. 545, 553) an order of the Appellate Division of the Supreme Court (R. 36-7, 37-41; 268 App. Div. 30) unanimously affirming the original judgment of the Court of Special Sessions convicting defendant of the crime of POSSESSING WITH INTENT TO SELL MAGAZINES DEVOTED TO ACCOUNTS OF DEEDS OF BLOODSHED, LUST AND CRIME (Penal Law, §1141, subd. 2). This appeal was allowed by the Chief Judge of the Court of Appeals (R. 52-3).

Introduction

Appellant was convicted of possessing with intent to sell some two thousand copies of a lurid magazine entitled "Headquarters Detective—True Cases from the Police Blotter," which plainly violated a New York indecency and obscenity-type statute outlawing publications principally devoted to tales of "bloodshed, lust or crime" (exhibits 4, 5; Penal Law, §1141, subd. 2).

On appeal, the first under the statute, the Court of Appeals construed it to apply to a narrowly-limited class of such printed matter which tends to incite to violent and depraved crimes against the person, and which neither has a legitimate relation to news, literature or science, nor constitutes any essential part of that exposition of ideas understood to be protected by the guarantee of a free press (see The Statute—As Construed, *infra*, pp. 5-6).

It is our position that the instant magazines are incapable of being identified with any constitutionally protected form of expression, that the statute as construed is incapable of interfering with any such expression, and that no other substantial constitutional question is presented.

The Questions Asked by the Court

In accordance with the order directing reargument, the three questions asked by the Court will be answered as follows:

Question 1: "Is subsection 2 of Section 1141 of the New York Penal Code, as construed by the Court of Appeals, compatible with the Fourteenth Amendment?"

Answer: Point I. The statute is constitutional as construed.

a. It cannot interfere with freedom of the press and the test of "clear and present danger" is therefore inapplicable (*infra*, pp. 7-8).

b. It is a valid exercise of the regulatory power (*infra*, pp. 9-10).

Question 2: "In view of such construction, assuming the answer to the first question is in the affirmative, was the conviction herein compatible with the Fourteenth Amendment, considering the state of the law to have been what it was at the time that the acts were committed for which the conviction was had?"

Answer: Point II. Appellant's conviction is constitutional in that the statute as it read at the time of the offense gave fair warning and furnished an adequate standard of guilt (*infra*, pp. 11-13).

Question 3: "In view of the construction herein given by the Court of Appeals to subsection 2 of Section 1141 of the New York Penal Code, what was the law, binding upon this Court, which governed the acts for which the conviction herein was had? Was the conviction under such controlling law, as applied to this defendant at that time, compatible with the Fourteenth Amendment?"

Answer: Point III. The law binding upon this Court is that declared by the Court of Appeals; the application of such controlling law to appellant as of the time of his offense presents no question under the Fourteenth Amendment (*infra*, pp. 13-16).

The Magazines

The Court of Appeals found that the magazines in this case "plainly carried an appeal to that portion of the public" who are "disposed to take to vice for its own sake" (R. 46). They were filled with tales of vice, murder and intrigue "embellished with pictures of fiendish and gruesome crimes * * * besprinkled with lurid photographs of victims and perpetrators," bearing such titles as "Bargains in Bodies," "Girl Slave to a Love Cult" and "Girls' Reformatory." They clearly tended to incite to "violent and depraved crimes against the person" (R. 46; see R. 38; exhibits 4, 5; Appendix A, *infra*, pp. 17-21).

Aside from the portrayal of such lurid descriptions of bloodshed and lust, the magazines manifest no other discernible theme or purpose. Appellant has admitted that they are in themselves of "no great importance" (see appellant's original brief, p. 11).[1] At no time below did he claim either that they dealt with any legitimate end of news, literature or science, or that they constituted any essential part of that exposition of ideas protected by the constitutional guarantee of a free press (*cf.* Appendix A, *infra*, pp. 17-21).

[1] We shall hereafter refer to the brief which appellant filed at the time of the first argument as his "original brief," and to the one submitted in answer to the Court's questions as his "brief on reargument."

The Statute

a. As Enacted

Article 106 of the New York Penal Law forbids enumerated forms of criminal "Indecency." Section 1141 in that indecency article bans the distribution of "Obscene prints." The first subdivision of that obscenity section deals exclusively with sexual immorality. The second, under which appellant was convicted, is directed against other forms of immorality and provides that any person shall be guilty of a misdemeanor who (Penal Law, §1141, subd. 2):

> "Prints, utters, publishes, sells, lends, gives away, distributes or shows, or has in his possession with intent to sell, lend, give away, distribute or show, or otherwise offers for sale, loan, gift or distribution, any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime; * * *."

b. As Construed

The Court of Appeals construed this statute in harmony with its context, accepted canons of construction, and the opinion in *Chaplinsky* v. *New Hampshire*, 315 U. S. 568 (R. 45-6, 48). Applying recognized doctrines of indecency and obscenity law to the text before it, the court ruled that pictures and stories of criminal deeds of bloodshed and lust were indecent and obscene in an admissible sense only when so massed as to tend to incite to "violent and depraved crimes against the person" (R. 46; *cf. Magon* v. *United States* (C. C. A. 9th 1918), 248 Fed. 201, 202-203, cert. den. 249 U. S. 618).

Emphasizing the narrow scope of the statute, the court made clear that it interfered with no legitimate end of news, literature or science, and rejected as manifestly absurd the contention that the statute might be used to outlaw "truth, fiction and statistics," "news," "police reports," "commentaries" or "scientific treatises" dealing with crime (R. 45).

In accord with previously announced New York doctrine confining indecency and obscenity legislation to matters not protected by constitutional guarantees of free expression [*cf. People* v. *Eastman* (1907) 188 N. Y. 478, 481-482], the court identified the matter outlawed by the instant statute with those utterances whose suppression has "never been thought to raise a constitutional problem" because they form no "essential part of any exposition of ideas" (R. 48; see *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571-572).

Appellant has suggested no situation in which the statute, thus construed by the Court of Appeals, could be unconstitutionally applied.

POINT I.

The statute is constitutional as construed [answering question 1].

A. The statute cannot interfere with freedom of the press, and the test of "clear and present danger" is without application.

This is apparently the first State indecency or obscenity statute to be reviewed by this Court. As the Court of Appeals recognized, it falls within that well-accepted category of legislation which, having its own carefully-fashioned tests, has never been held to be forbidden by the guarantee of a free press nor subjected to the overriding test of "clear and present danger" [*cf. Robertson* v. *Baldwin*, 165 U. S. 275, 281; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571-572; *Tyomies Publishing Co.* v. *United States* (C. C. A. 6th 1914) 211 Fed. 385, 388; *United States* v. *Harmon* (D. Kans. 1891) 45 Fed. 414, 415-416, rev'd on other grounds 50 Fed. 921; *United States* v. *Journal Co.* (E. D. Va. 1912) 197 Fed. 415, 418; *Rebhuhn* v. *Cahill* (S. D. N. Y. 1939) 31 Fed. Supp. 47, 49; *In re Banks* (1895) 56 Kan. 242, 243-244, 42 Pac. 693, 694; *Williams* v. *State* (1923) 130 Miss. 827, 841-842, 94 So. 882, 883; *State* v. *Van Wye* (1896) 136 Mo. 227, 233-236, 37 S. W. 938, 939-940; 2 Cooley's *Constitutional Limitations* (8th ed. 1927) pp. 886, 1328].

Moreover, even assuming that this were not an indecency or obscenity statute, it has been so limited by the Court of Appeals that, as construed, it excludes from its scope of operation all writings purporting to champion or discuss ideas on matters of public importance, and therefore can in no possible way interfere with any essential part of exposition of ideas protected by freedom of the

press and by the test of "clear and present danger" (see The Statute—As Construed, *supra*, pp. 5-6; R. 45-8; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571-572; *cf. Mutual Film Corp.* v. *Ohio Industrial Comm.*, 236 U. S. 230; see, also, *Whitney* v. *California*, 274 U. S. 357, 375-378 (Mr. Justice BRANDEIS concurring); *Near* v. *Minnesota*, 283 U. S. 697, 717-718; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 245-250; *Lovell* v. *Griffin*, 303 U. S. 444, 452; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152-153n; *Thornhill* v. *Alabama*, 310 U. S. 88, 95, 101-102; *Thomas* v. *Collins*, 323 U. S. 516, 544-546 (Mr. Justice JACKSON concurring).

The cases cited by appellant (original brief, pp. 7, 11, 13-14, 16, 17, 21-23; brief on reargument, pp. 7, 9, 12-13, 15, 17, 24, 36, 45-46) are not in point. None involved statutes of this recognized indecency and obscenity type. All dealt with political, economic or religious utterances clearly forming an essential part of the constitutionally protected exposition of ideas, the repression of which is impossible under this statute as construed. [POLITICAL: *Near* v. *Minnesota*, 283 U. S. 697; *Herndon* v. *Lowry*, 301 U. S. 242. POLITICO-ECONOMIC: *Fiske* v. *Kansas*, 274 U. S. 380; *Hague* v. *C. I. O.*, 307 U. S. 496; *Thornhill* v. *Alabama*, 310 U. S. 88; *A. F. L.* v. *Swing*, 312 U. S. 321; *Bridges* v. *California*, 314 U. S. 252. RELIGIOUS: *Schneider* v. *State*, 308 U. S. 147; *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Martin* v. *Struthers*, 319 U. S. 141; *Douglas* v. *Jeannette*, 319 U. S. 157; *Board of Education* v. *Barnette*, 319 U. S. 624. *Cf. Palko* v. *Connecticut*, 302 U. S. 319, 327; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152-153; *Ex parte McCormick* (1935) 129 Tex. Crim. Rep. 457, 88 S. W. (2d) 104].

In brief, the statute as construed cannot interfere with any publications protected by freedom of the press, and the test of "clear and present danger" is therefore inapplicable.

B. The statute is a valid exercise of the regulatory power.

All questions of interference with freedom of the press and, consequently, of the application of the "clear and present danger" doctrine having been eliminated, it only remains to determine whether the statute as construed has reasonable relation to a proper legislative purpose (compare *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152-153n with *Nebbia* v. *New York*, 291 U. S. 502, 537).

There can be no doubt of the propriety of a legislative purpose to protect morals and prevent crime [*cf. Fox* v. *Washington*, 236 U. S. 273, 277; *Gitlow* v. *New York*, 268 U. S. 652, 666-671; *Near* v. *Minnesota*, 283 U. S. 697, 716; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568; *State* v. *McKee* (1900) 73 Conn. 18, 26, 46 Atl. 409, 412 (identical statute), cited in *Gitlow* v. *New York*, 268 U. S. 652, 667].

There is adequate basis for the legislative judgment that forms of criminal suggestion have an appreciable effect upon delinquency and crime and, accordingly, that suppression of the narrowly limited class of printed matter against which this statute is directed bears reasonable relation to that legislative purpose [*cf. State* v. *McKee* (1900) 73 Conn. 18, 46 Atl. 409 (identical statute), cited in *Gitlow* v. *New York*, 268 U. S. 652, 667; *Strohm* v. *People* (1896) 160 Ill. 582, 43 N. E. 622; see, also, Blumer and Hauser, *Movies, Delinquency and Crime* (1933) pp. 9, fn. 9; 11-112; 198-200; commented on in 22 Survey Graphic (May 1933) pp. 245-250; 115 Literary Digest (May 13, 1933) p. 16; 8 Parents' Magazine (Aug. 1933) pp. 18-19; Taft, *Criminology* (1942) pp. 199-206; Thrasher, *The Gang* (2nd ed. 1936) pp. 106-113; Healy, *The Individual Delinquent* (1915) pp. 304-306, see pp. 339-341; Beckham, *Over-*

Suggestibility in Juvenile Delinquency, 28 Journal of Abnormal and Social Psychology (July-Sept. 1933) pp. 172-178; Cochran, *Movies and Young Criminals*, 21 National Education Association Journal (May 1932) p. 169; Preston, *Children's Reactions to Movie Horrors and Radio Crime*, 19 Journal of Pediatrics (Aug. 1941) pp. 147-168; *The Juvenile Delinquency Problem* (Federal Bureau of Investigation, U. S. Dept. of Justice, Memorandum, April 8, 1946) p. 5, no. 16; Cooper, *This Trash Must Go!* 103 Forum (February 1940) pp. 61-64].

Finally, the statute as construed is directed exclusively against publications of such "slight social value as a step to truth" that any benefit that might be derived from their distribution is "clearly outweighed by the social interest in order and morality." It is, therefore, a valid exercise of the regulatory power (*Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 572).

In summary: As construed, the statute cannot interfere with any publication coming within the protection of the constitutional guarantee of free discussion, and the test of "clear and present danger" is therefore without application. It was properly enacted in furtherance of a valid legislative purpose. The statute as construed is, therefore, compatible with the Fourteenth Amendment.

POINT II

Appellant's conviction is constitutional in that the statute as it read at the time of the offense gave fair warning and furnished an adequate standard of guilt [answering question 2].

We here assume that the publications involved can make no claim to constitutional protection; that the statute is constitutional as construed in that, enacted pursuant to a legitimate legislative purpose, it cannot interfere with publications protected by freedom of the press; and, accordingly, that the test of "clear and present danger" is inapplicable (see The Magazines; Point I, *supra*, pp. 4, 7-10).

The statute gave fair notice of its ultimate effect in that it was readily recognizable as falling within a previously established body of law dealing with indecency and obscenity [see *State* v. *McKee* (1900) 73 Conn. 18, 46 Atl. 409 (identical statute), cited in *Gitlow* v. *New York*, 268 U. S. 652, 667; *Strohm* v. *People* (1896) 160 Ill. 582, 43 N. E. 622].

Like all others of its type, this statute ultimately depends for its application on the community's standard of morality, long recognized as furnishing an adequate standard of guilt [*cf. Rosen* v. *United States*, 161 U. S. 29, 41-42; *Tyomies Publishing Co.* v. *United States* (C. C. A. 6th 1914) 211 Fed. 385, 388; *Coomer* v. *United States* (C. C. A. 8th 1914) 213 Fed. 1, 5-6; *Magon* v. *United States* (C. C. A. 9th 1918) 248 Fed. 201, 202-203, cert. den. 249 U. S. 618; *United States* v. *Levine* (C. C. A. 2nd 1936) 83 Fed. (2d) 156, 157; *United States* v. *Rebhuhn* (C. C. A. 2nd 1940) 109 Fed. (2d) 512, 514, cert. den. 310 U. S. 629;

also Cardozo, *The Paradoxes of Legal Science* (1928) pp. 36-37].

The mere fact that this particular indecency and obscenity statute presents a variant of common law forms, and deals partially with matters other than sexual immorality, does not prevent such application of community morality as a standard of guilt [*cf. United States* v. *Limehouse*, 285 U. S. 424, 426; *Magon* v. *United States* (C. C. A. 9th 1918) 248 Fed. 201, cert. den. 249 U. S. 618; 36 Stat. 1339 (18 U. S. C. A., §334); *State* v. *McKee* (1900) 73 Conn. 18, 46 Atl. 409 (identical with instant statute), cited in *Gitlow* v. *New York*, 268 U. S. 652, 667; *Strohm* v. *People* (1896) 160 Ill. 582, 43 N. E. 622].

The cases upon which appellant relies (original brief, pp. 10, 17-20; brief on reargument, pp. 9, 27, 36, 42) all dealt with legislation having no similarity to the instant statute. The statutes in one group failed to furnish an adequate standard of guilt in that they used words incapable of ready understanding (*Lanzetta* v. *New Jersey*, 306 U. S. 451) or words relative in meaning [*United States* v. *Cohen Grocery Co.*, 255 U. S. 81; *Small* v. *American Sugar Refining Co.*, 267 U. S. 233; *Connally* v. *General Construction Co.*, 269 U. S. 385; *Champlin Refining Co.* v. *Comm.*, 286 U. S. 210; *United States* v. *Capitol Traction Co.* (1910) 34 App. D. C. 592; compare *United States* v. *Durst* (S. D. W. Va. 1945) 59 Fed. Supp. 891, 893], although the offenses created fell into no previously recognized body of law, such as indecency and obscenity, capable of supplying the necessary standard of guilt.

Those in a second group were declared invalid because, as construed, they interfered with constitutional guarantees of free expression (*Stromberg* v. *California*, 283 U. S. 359; *Herndon* v. *Lowry*, 301 U. S. 242; *Thomas* v. *Collins*, 323 U. S. 516). Under the assumption upon which this point proceeds, such cases are without application (see *supra*, p. 11).

In summary: The statute as it read at the time of the offense was readily recognizable as falling within an established body of law accepted as furnishing an adequate standard of guilt. It therefore gave fair warning and, in this respect, appellant's conviction thereunder was compatible with the Fourteenth Amendment.

POINT III

The law binding upon this Court is that declared by the Court of Appeals; the application of such controlling law to appellant as of the time of his offense presents no question under the Fourteenth Amendment [answering question 3].

We here assume that the statute as enacted was a valid exercise of state power, that it provided an adequate standard of guilt, and that no question of interference with freedom of the press is involved (see Points I and II, *supra*, pp. 7-13).

In the absence of any of those questions, the law which is binding upon this Court and which governed the act for which appellant was convicted is that declared by the Court of Appeals [see *Missouri, Kansas & Texas Ry.* v. *McCann*, 174 U. S. 580, 586; *Tullis* v. *Lake Erie & Western R. R.*, 175 U. S. 348, 353-354; *Gatewood* v. *North Carolina*, 203 U. S. 531, 541, 543; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78; *Quong Ham Wah Co.* v. *Industrial Comm.*, 255 U. S. 445, 448-449; *Pierce Oil Corp.* v. *Hopkins*, 264 U. S. 137, 139; *Knights of Pythias* v. *Meyer*, 265 U. S. 30, 32-33; *Hicklin* v. *Coney*, 290 U. S. 169, 172; *Schuylkill Trust Co.* v. *Pennsylvania*, 302 U. S. 506, 512; *Minnesota* v. *Probate Court*, 309 U. S. 270, 273; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 572-574].

Moreover, even though first declared in the very case in which the conviction was had, that controlling law was constitutionally applied to appellant as of the time of his offense (*cf. Smiley* v. *Kansas*, 196 U. S. 447; *Rosenthal* v. *New York*, 226 U. S. 260; *Ross* v. *Oregon*, 227 U. S. 150; *Fox* v. *Washington*, 236 U. S. 273; *Frank* v. *Mangum*, 237 U. S. 309, 343-344; *Dorchy* v. *Kansas*, 272 U. S. 306).

There is no merit in the contention that the statute should be deemed unenforceable because prosecution thereunder is necessarily subject to that normal element of unpredictability inherent in all criminal actions, particularly under statutes dealing with the indecent and the obscene (compare appellant's original brief pp. 8-9, 17-18; brief on reargument, pp. 8-12, 13-14, with *Rosen* v. *United States*, 161 U. S. 29, 41-42; *Nash* v. *United States*, 229 U. S. 373, 376-377; *Hygrade Provision Co.* v. *Sherman*, 266 U. S. 497, 502; *United States* v. *Ragen*, 314 U. S. 513, 523-524; *Tyomies Publishing Co.* v. *United States* (C. C. A. 6th 1914) 211 Fed. 385, 388; *Coomer* v. *United States* (C. C. A. 8th 1914) 213 Fed. 1, 5-6; *Magon* v. *United States* (C. C. A. 9th 1918) 248 Fed. 201, 202-203, cert. den. 249 U. S. 618).

Nor is there merit in appellant's suggestion that the statute should be unenforceable as to him because of his failure to anticipate that the Court of Appeals would, in accordance with traditional practice, construe it to eliminate all constitutional questions (compare appellant's brief on reargument, pp. 27-28, 41-42 with *Quong Ham Wah Co.* v. *Industrial Comm.*, 255 U. S. 445, 448-449; see *United States* v. *Kirby*, 74 U. S. 482, 486-487; *Fox* v. *Washington*, 236 U. S. 273, 277; *United States* v. *Jin Fuey Moy*, 241 U. S. 394, 401; *Baender* v. *Barnett*, 255 U. S. 224, 225-226; *Schuylkill Trust Co.* v. *Pennsylvania*, 302 U. S. 506, 512; *Federation of Labor* v. *McAdory*, 325 U. S. 450, 470-471).

The Court of Appeals construed this statute in a wholly reasonable fashion, following lines plainly indicated by the context and applying previously established doctrines of indecency and obscenity law (see R. 45-6; The Statute—As Construed, *supra*, pp. 5-6; also *United States* v. *American Trucking Assns.*, 310 U. S. 534, 542-544; *Southland Co.* v. *Bayley*, 319 U. S. 44, 47; *Magon* v. *United States* (C. C. A. 9th 1918) 248 Fed. 201, 202-203, cert. den. 249 U. S. 618). The instant case therefore presents no more basis for a claim of surprise or other injury than is necessarily present in any appellate determination of a question of law, particularly in a case of first impression under a criminal statute.

Finally, even had the Court of Appeals construction provided basis for a claim of surprise or other injury, appellant's failure to present such claim to that court by motion for reargument precludes him from urging it upon this appeal (*Rosenthal* v. *New York*, 226 U. S. 260, 272).

Stromberg v. *California*, 283 U. S. 359, and *Williams* v. *North Carolina*, 317 U. S. 287, upon which appellant relies (original brief, p. 15; brief on reargument, p. 45) each involved a situation where it affirmatively appeared that the case had been submitted to the jury on an unconstitutional ground, upon which the verdict might probably have rested (see 283 U. S., at pp. 363-364, 368; 317 U. S., at pp. 290-292). No such question can here arise, since the record contains nothing to suggest that the trial court did not act in accordance with the Constitution.

The balance of the cases upon which appellant relies (see original brief, pp. 6-7, 9, 14; brief on reargument, pp. 30-33, 36-41) are, in the light of the foregoing discussion, so plainly irrelevant or distinguishable as to require no comment.

It follows that the law binding upon this Court is that declared by the Court of Appeals; and that the conviction under such controlling law, as applied to appellant as of the time of his offense, is compatible with the Fourteenth Amendment.

Conclusion

The statute as construed, the conviction thereunder, and the law declared by the Court of Appeals and applied to appellant as of the time of his offense are in all ways compatible with the Fourteenth Amendment.

The judgment appealed from should be affirmed.

Respectfully submitted,

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November, 1947

APPENDIX A

Selected Article and Illustration Headings from Exhibits 4 and 5

"HEADQUARTERS DETECTIVE—TRUE CASES FROM THE POLICE BLOTTER"

Issue of June, 1940 (exhibit 4)

GIRL SLAVE to a LOVE CULT! Behind the incense, rites (and real estate) lay coiled the venomous serpent that feasted secretly on the bodies of girls and boys. The Voice—"Your body is the temple of God * * *". Mystic—there was the look of power in the doctor's face. Terror—held her. "You must not cry," he ordered, "Look into my eyes." "You Must—know your purpose and the destiny of womanhood. Are you ready?" (pp. 6, 8, 10-11).

Trailing Carolina's TOURIST CAMP KILLERS. A corpse and a dagger tie a knot that takes a year of sleuthing to untie. In Cold Blood—this knife was used to slay a friendly man (pp. 12, 14).

MURDERERS MAKE MISTAKES. THE CASE OF FRED SMALL. He wept when he heard that his wife had burned to death. But all his tears could not wash away what the fire left. "A Rag and a Bone—and hank of hair" were still there to point accusingly when the flames cooled (p. 16).

DEAD MEN TELL NO TALES. When Thieves Fall Out—Honest Men Are Apt To Find Bodies Cluttering Up The Landscape. Bullets and Blood—Undersheriff Lawrence Nieri examining the riddled bodies of two men dumped by the roadside (pp. 18-19).

CAN YOU SOLVE! THIS TRUE HEADQUARTERS DETECTIVE PHOTO MYSTERY? They found Mrs. Charles Butte bludgeoned to death in her bed * * *. Yoris

spent a long time looking at the blood spots on the bed * * *. Yoris studied a drying pool of blood by the side of the bed * * *. Blood spots on the floor next drew the attention of the detectives (pp. 22-25).

MURDER in the AIR! "The Flying Lochinvar" comes out of the west in a stolen airplane, flies away with a girl and stages America's first murder in the air. The first plane to see air murder. Victim—Carl Bivens was murdered in the cabin of his own plane (pp. 26, 29).

GIRLS' REFORMATORY. "Reform School! That was a funny name for it. If you came in there decent you left with all the vices of the underworld." If a Girl—was nice to him she got privileges. If not, then her life was hell (pp. 30, 33).

COP KILLERS DIE HARD! Romance is stained with blood as a killer stalks in Lover's Lane. The Shell—and the gun that killed a cop in Humboldt Park, in Chicago. The Killer—demonstrates how he took the life of Officer Harry Francois (pp. 36, 39).

CASE OF THE MISSING CAT! "Thou Shalt Not Kill * * *." What made this man of God break the sixth commandment of his creed? Mrs. Helen Sherwood—the "other woman" in the tragic case. This Love Nest—Was used by the philandering parson in his fall from grace (pp. 40-41, 43).

BAGGING THE BAY STATE BANDIT! He died fighting! But a brave shopkeeper's death put two savage killers in the electric chair. Cruelty—was the clue that Green (left) and St. Saveur left on every job they pulled. The Sister—of Walter St. Saveur on her way to visit him in the Charleston death house (pp. 44-46).

MURDERED MOTHER? Beatrice Cox, 35-year-old ex-school teacher, shown in San Diego hospital, where she was held after being charged with the murder of her aged mother (p. 49).

FACES MURDER CHARGE. Clyde Clarke, Jr., 15 years old, who is held on murder charges after the rape-death of a young South Haven, Michigan, mother * * * (p. 51).

STRANGLED. Mary Mills, whose strangled body was discovered by South Barre, Mass., police * * * (p. 53).

CAPTURED. Lorenzo Celline, after his capture by police. He is charged with slaying Julia Weiderman * * * on a New York street (p. 55).

DEPORTED. Captain Ivan Poderjaz waves good-bye to the U. S. A., having been deported * * *. Extradited to this country as a murder suspect, Poderjaz was tried on [a] * * * bigamy charge when no trace of the body could be found (p. 56).

BEATS CHAIR IN "PERFECT CRIME." Carl Hubert Erickson, called the "most intelligent person" ever charged with murder in Chicago, is shown with his mother before being freed by a jury * * * (p. 58).

AND SUDDEN DEATH! Nude, Beaten and—disfigured, the body of Alice Burns was found in a Los Angeles vacant lot. Six Times—the slayer sank his knife, and cruelly mutilated the face (p. 66).

Issue of August, 1940 (exhibit 5)

BARGAINS IN BODIES! **"Once you're booked—you're hooked. The only escape from the White Slave traffic is the hospital or the morgue."** "I Felt—old and jaded after taking dope." His Eyes—and his long, thin hands made me tremble in fear. I Shrieked—and tried to shout but no sound came. Savagely—like a madman he picked me up and hurled me to the bed (pp. 6-7, 9-10).

TRAIL'S END. Left Handed Cop—Thomas O'Brien shows how he drilled Pignatelli on a New York rooftop (p. 16).

ENIGMA OF THE LAUGH OF DEATH. Three ghosts still laugh and haunt the old Houck house as the hand of death ends an Oklahoma feud. Mamie Houck's Death—began a hate that put Bill Darnell behind prison bars for 30 years. At Fairfield, Okla.—The arrow indicates the spot where officers found the death car parked. Bluford Graham—escaped death in the war to find it on a peaceful road at night (pp. 22-25).

"I'LL HANG FROM THE HIGHEST HILL—for I Murdered My Mother. "I Stabbed her with the ice pick. I don't know how many times I stabbed her. Then I choked her till she stopped groaning." Black Murder—will forever haunt this charming home. Matricide—left the body of Mrs. Redding in this position. Note the cord around the neck (pp. 26-27, 29).

BANK NIGHT! The Nation's Ace Sleuths Track Down a Million Dollar Robbery. $15,000 in Loot—was taken from this bank in Needham, Mass., after one policeman was killed (pp. 30, 32-33).